

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA . Criminal No. 1:18cr333
. .
vs. . Alexandria, Virginia
. September 17, 2018
CARLA DONNA McPHUN, . 2:00 p.m.
. .
Defendant. .
.

TRANSCRIPT OF PRE-INDICTMENT PLEA
BEFORE THE HONORABLE LEONIE M. BRINKEMA
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE GOVERNMENT: JACK HANLY, AUSA
GRACE L. HILL, AUSA
United States Attorney's Office
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Alexandria, VA 22314

FOR THE DEFENDANT: RICHARD A. FINCI, ESQ.
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and
JONATHAN R. OATES, ESQ.
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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

1 | P R O C E S S E N T R Y C O M M U N I C A T I O N D I S T R I B U T I O N I N V E S T I G A T I O N N E X T G O

2 (Defendant present.)

3 THE CLERK: Criminal Case 18-333, United States of
4 America v. Carla Donna McPhun. Would counsel please note their
5 appearances for the record.

6 MR. HANLY: Good afternoon, Your Honor. Jack Hanly
7 and Grace Hill for the United States.

8 THE COURT: Good afternoon.

9 MR. FINCI: And good afternoon, Your Honor. Richard
10 Finci and Jonathan Oates on behalf of Carla McPhun. Nice to
11 see you again, Your Honor.

12 THE COURT: All right.

13 MR. OATES: Good afternoon, Your Honor.

14 THE COURT: Ms. McPhun, go up to the lectern. The
15 clerk is going to place you under an affirmation.

16 CARLA DONNA DeSILVA McPHUN, DEFENDANT, AFFIRMED

17 THE COURT: All right. Ms. McPhun, you have just
18 taken a promise to tell the truth in answering all of the
19 Court's questions. That means that if you should lie in
20 answering any question, the government could prosecute you for
21 a new and separate crime called perjury.

Do you understand that?

THE DEFENDANT: Yes.

24 THE COURT: For the record, what is your full name?

25 THE DEFENDANT: Carla Donna DeSilva McPhun.

1 THE COURT: And, Ms. McPhun, how old are you?

2 THE DEFENDANT: Fifty.

3 THE COURT: How much schooling have you completed?

4 THE DEFENDANT: A bachelor's.

5 THE COURT: You have a bachelor's degree?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: Do you have any problem reading, writing,
8 understanding, or speaking English?

9 THE DEFENDANT: No, I don't.

10 THE COURT: Are you a United States citizen?

11 THE DEFENDANT: Yes, I am.

12 THE COURT: Are you presently on probation, parole,
13 or supervised release from any other criminal case?

14 THE DEFENDANT: No, I'm not.

15 THE COURT: Are you at this time under the care of a
16 doctor for any physical or mental condition?

17 THE DEFENDANT: No, I'm not.

18 THE COURT: You're not being treated? I thought the
19 pretrial report indicated you have some problems.

20 THE DEFENDANT: I take medication, but I'm not under
21 the doctor's care.

22 THE COURT: All right. What medications are you
23 taking?

24 THE DEFENDANT: I don't have the names of them. I
25 don't have --

1 THE COURT: How many prescription medications do you
2 take on a daily basis?

3 THE DEFENDANT: I don't take any of them on a daily
4 basis.

5 THE COURT: So they're as needed?

6 THE DEFENDANT: One is as needed. That's the heart
7 medication. The other one is every 14 days, I do a ten-day
8 course.

9 THE COURT: All right. Now, right now, are you
10 feeling the results of any of your medical conditions?

11 THE DEFENDANT: No. Just in the last couple of days,
12 a little bit of heart fluttering. That's it.

13 THE COURT: Well, it said in the Pretrial Services
14 report you have panic attacks.

15 THE DEFENDANT: Yes. But that's the fluttering in
16 the heart that I get as a result of stress.

17 THE COURT: All right. In any respect, is that
18 condition bothering you right now?

19 THE DEFENDANT: No, not at this time.

20 THE COURT: So within the last 24 hours, have you
21 taken any medicine, whether by prescription or over the
22 counter, like an aspirin or an Advil?

23 THE DEFENDANT: No, I have not.

24 THE COURT: Are you at this time under the influence
25 of any alcohol or illegal drugs?

1 THE DEFENDANT: No, I am not.

2 THE COURT: All right. Ms. McPhun, in court today,
3 there are several documents we need to go over. The first one
4 is entitled "Waiver of an Indictment," and I see what appears
5 to be your signature.

6 Did you, in fact, sign that waiver?

7 THE DEFENDANT: Yes, I did.

8 THE COURT: Now, before you signed the waiver, did
9 you discuss it thoroughly with your counsel?

10 THE DEFENDANT: Yes, I did.

11 THE COURT: And did they explain to you that under
12 the laws and Constitution of the United States, you have an
13 absolute right to require the federal prosecutors to go before
14 a group of people called a federal grand jury with the evidence
15 that they've developed concerning your being involved in a wire
16 fraud scheme?

17 Do you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Now, a federal grand jury is made up of
20 anywhere from 16 to 23 ordinary citizens who are brought
21 together on a random basis, and the job of a grand jury is to
22 review possible felony-level federal cases before they actually
23 go public.

24 Do you understand that?

25 THE DEFENDANT: Yes, I do.

1 THE COURT: So what happens in the grand jury
2 process, which is a secret process, is a prosecutor like
3 Mr. Hanly will go into the room, advise the grand jurors that
4 he believes the person has committed a crime or multiple
5 crimes, and then he'll present evidence to the grand jurors
6 supporting that position. Now, that could be the testimony of
7 witnesses. It could be photographs, charts, whatever evidence
8 is needed.

9 Then the prosecutor leaves, and so just the grand
10 jurors are alone together, and if at least 12 members of the
11 grand jury are satisfied that the evidence presented
12 establishes probable cause to believe that the crime or crimes
13 have been committed by that person, the grand jury will issue a
14 document called an indictment, and that is normally how a
15 felony-level prosecution begins in federal court.

16 Do you understand that?

17 THE DEFENDANT: Yes, I do.

18 THE COURT: So that grand jury process is considered
19 to be a way of protecting a person's rights because it exists
20 to make sure that a person is not publicly charged with serious
21 criminal activity without there being a factual basis to
22 support the charge.

23 Do you understand that?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: Now, a person can give up her right to

1 that grand jury review process, and that would be done by
2 signing a waiver of indictment, such as the one you have
3 signed. In the law, the word "waiver" means to give something
4 up, so by giving up the grand jury review process, you are
5 forgoing that review, and instead, you're allowing the
6 prosecutors to come to court this afternoon and file this fraud
7 charge against you without the charge having been tested by a
8 grand jury.

9 Do you understand that?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: Now, other than your plea agreement,
12 which we will get to in a second, do you believe that anybody
13 has promised or suggested to you that by waiving indictment,
14 you would get a lighter sentence or more favorable treatment by
15 the Court?

16 Other than your plea agreement, do you believe that
17 anybody has promised or suggested to you that by waiving
18 indictment, you would get a lighter sentence or more favorable
19 treatment by the Court?

20 THE DEFENDANT: No.

21 THE COURT: Has anyone put any force or pressure on
22 you to waive indictment today?

23 THE DEFENDANT: No.

24 THE COURT: And, counsel, have you had enough time to
25 go over this waiver with your client?

1 MR. FINCI: I have, Your Honor.

2 THE COURT: Are you satisfied that Ms. McPhun is
3 entering her waiver in a knowing and voluntary fashion?

4 MR. FINCI: I am, Your Honor.

5 THE COURT: All right. Then based upon these answers
6 to the Court's questions, I'm finding that this has been a
7 waiver entered with the full advice of counsel and done in a
8 knowing and voluntary fashion. So the waiver is accepted, and
9 that allows the government to file the following charge, and
10 that is, that on or about March 10 of 2017, in the Eastern
11 District of Virginia and elsewhere, that you, the defendant
12 herein, devised a scheme and artifice to defraud and to obtain
13 money by means of materially false and fraudulent pretenses and
14 representations from M.W. in order to provide money to Keisha
15 Williams.

16 Having devised the scheme, you knowingly caused to be
17 transmitted by means of wire communications in interstate
18 commerce writings, signs, and signals for the purpose of
19 executing the scheme and artifice to defraud; that is, that you
20 caused Christian D'Andrade in California to exchange text
21 messages with Keisha Williams in this district for the purpose
22 of obtaining for the defendant and M.W. the account information
23 for Keisha Williams' Bank of America account for M.W. to then
24 use when wiring money from her bank in Maryland to Keisha
25 Williams' account.

1 Do you understand the nature of the wire fraud count?

2 THE DEFENDANT: Yes.

3 THE COURT: And to that charge, how do you want to
4 plead, guilty or not guilty?

5 THE DEFENDANT: Guilty.

6 THE COURT: Now, before the Court accepts your guilty
7 plea, I'm going to go over with you a series of questions about
8 your plea agreement and the facts of the case. If at any point
9 this afternoon you change your mind and decide you don't want
10 to go forward with a guilty plea, you can stop the process and
11 withdraw your plea, and we will enter a plea of not guilty, and
12 we will set this case for a trial within the next 70 days.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Now, the plea agreement that's been filed
16 in court this afternoon is 12 pages long, and I see on page 12
17 with the date of August 20 what appears to be your signature.
18 Did you, in fact, sign the written plea agreement?

19 THE DEFENDANT: Yes.

20 THE COURT: And you signed it almost a month ago; is
21 that correct?

22 THE DEFENDANT: Yes, I did.

23 THE COURT: Now, before you signed the plea
24 agreement, did you read it over for yourself word for word?

25 THE DEFENDANT: Yes, I did.

1 THE COURT: And when did you first see the plea
2 agreement? Was it the day you signed it, or had you seen it
3 before then?

4 THE DEFENDANT: Before then?

5 THE COURT: All right.

6 THE DEFENDANT: Before then, yes.

7 THE COURT: So I assume you had been discussing a
8 possible plea with your attorneys for some time before
9 August 20; is that correct?

10 THE DEFENDANT: Yes.

11 THE COURT: All right. But on August 20, when you
12 signed the plea agreement, do you feel you'd had enough time to
13 thoroughly discuss it with your lawyers?

14 THE DEFENDANT: Yes.

15 THE COURT: Have you asked your attorneys everything,
16 all the questions that you have about this plea agreement?

17 THE DEFENDANT: Yes, I did.

18 THE COURT: Have they answered all of your questions
19 to your satisfaction?

20 THE DEFENDANT: Yes, they did.

21 THE COURT: And do you understand that if you have
22 any questions, you can ask me or ask your counsel? Do you
23 understand that?

24 THE DEFENDANT: Now I do.

25 THE COURT: Do you have any questions you want to ask

1 me about the plea agreement?

2 THE DEFENDANT: Not at this time.

3 THE COURT: All right. And if at any point this
4 afternoon while we're asking this dialogue, if you have a
5 question, you can stop and you can ask your attorneys, or you
6 can ask me. Do you understand?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: All right. Now, do you have a copy of
9 your plea agreement with you right there? I want you to turn
10 to page 12. That's the page that has your signature on it.

11 Do you have it there?

12 THE DEFENDANT: Yes, I do.

13 THE COURT: All right. I want you to look at the two
14 sentences right above your signature. They go, "I have read
15 this plea agreement and carefully reviewed every part of it
16 with my attorneys. I understand this agreement and voluntarily
17 agree to it."

18 Do you see those two sentences?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: Are they completely true?

21 THE DEFENDANT: Yes.

22 THE COURT: Now, by telling the Court that you've
23 read the entire plea agreement and discussed it thoroughly with
24 your attorneys and you understand it and you're voluntarily
25 agreeing to it, that means you will be bound by everything

1 that's written in this 12-page document even if I don't go over
2 every paragraph or page with you in court today.

3 Do you understand that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: And the reason for that result is that
6 this plea agreement is really a written contract between you
7 and the United States government, and when a person signs a
8 written contract after she's carefully discussed it with an
9 attorney and she understands it when she signs it and she signs
10 it voluntarily, then that becomes a binding legal document, and
11 you can't just come back to court in a couple of weeks and say,
12 well, you thought more about it; you don't like what's on page
13 4, for example. That's too late.

14 Do you understand that?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: Now, other than this written plea
17 agreement, do you believe you have any side deals or side
18 understandings with any prosecutor, investigator, or anybody
19 else concerning this case?

20 THE DEFENDANT: No, I do not.

21 THE COURT: And, counsel, is that correct that there
22 are no other deals?

23 MR. FINCI: There are no other agreements, Your
24 Honor.

25 THE COURT: All right. And let's turn to page 1,

1 paragraph 1. There it says you've agreed to waive indictment,
2 which you've done, and enter a guilty plea to the single-count
3 information that I've explained to you.

4 Do you understand that the offense of wire fraud is a
5 felony that exposes you to up to 20 years of imprisonment
6 followed by a period of supervised release which could be as
7 long as three years? Do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: In addition, the fine could be as much as
10 \$250,000, or twice the amount of gross gain or loss resulting
11 from the offense. You could be required to make restitution,
12 and there will be an automatic special assessment of \$100.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Now, in this case, there is restitution
16 that's spelled out, and the restitution is listed in paragraph
17 8, but includes \$100,000 to somebody identified as M.W.; and
18 you've also agreed to pay E.M. \$10,000; D.T. \$23,000; I.H.
19 \$10,000; and J.V. \$250,000.

20 Is that part of your understanding of the agreement?

21 THE DEFENDANT: Yes, it is.

22 THE COURT: All right. Now, parole is not available
23 in the federal system, and that means whatever term of
24 imprisonment that's imposed must be fully served. Do you
25 understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: When the prison portion of a sentence has
3 been satisfied, that's when the supervised release portion goes
4 into effect. When a person is on supervised release, she's
5 under the control of a federal probation officer, and there may
6 be requirements to do certain things as well as requirements
7 not to do certain things, and I cannot at this time tell you
8 the specific conditions of supervision because I haven't seen
9 the pre-sentence report, but what you need to understand at
10 this point is that if you violate any condition of supervised
11 release, you can be brought back to court, and if the violation
12 is established, you could be sent back to prison for as long as
13 the period of supervised release, which in this case could be
14 as much as three years.

15 Do you understand that?

16 THE DEFENDANT: Yes, I do.

17 THE COURT: Now, when it comes time for sentencing,
18 the Court will be looking at two sources of law: the Federal
19 Sentencing Guidelines and Section 3553(a) of Title 18 of the
20 United States Code.

21 With the guidelines, the Court must make two factual
22 decisions before the guidelines can be calculated. First we
23 have to determine your criminal history. Criminal histories
24 are divided into six categories, with each category getting a
25 number.

1 A No. I criminal history would go to someone who's
2 never been in trouble with the law or who has a very minor
3 record, and then as convictions, probation violations, the time
4 between offenses, and other things occur in the history, it
5 will go up, with a level VI going to the most serious
6 offenders.

7 Do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Then the Court must determine the offense
10 level. Now, every federal crime has a number given to it by
11 the Sentencing Commission. That's called the base or bottom
12 offense level. And then depending upon the specific facts of
13 the case, that number can go up or down.

14 Now, in your plea agreement, and this is in paragraph
15 4 on page -- I don't think the -- this page is not numbered,
16 but it's paragraph 4, in subparagraphs (a) and (b), you-all
17 have agreed to certain guideline factors. In paragraph 4(a),
18 you've agreed that the offense level here will be a base
19 offense level of 7, and then it should be increased eight
20 levels because the loss amount is between \$95,000 and \$150,000.

21 Is that part of your understanding?

22 THE DEFENDANT: Yes.

23 THE COURT: Now, then in paragraph 4(b), the parties
24 have agreed that there should be no other enhancements, that
25 means increases, to the offense level. Furthermore, it's -- in

1 that paragraph, it's provided that if you continue to assist
2 the government and fully accept responsibility, then the
3 government will file a motion asking that you get an additional
4 level reduction for acceptance of responsibility. The normal
5 levels for -- of reduction for acceptance of responsibility are
6 two levels, but if the government files a motion, a person can
7 get a third level.

8 Now, is that part of your understanding as well?

9 THE DEFENDANT: Yes, it is.

10 THE COURT: All right. Now, I first of all want to
11 make sure you understand that nothing in paragraph 4 binds or
12 limits the probation officer or the Court. It just limits the
13 parties.

14 Do you understand that?

15 THE DEFENDANT: I'm -- can you repeat that?

16 THE COURT: Yes. Paragraph 4 is only binding on the
17 prosecutors and on you and your attorneys. It doesn't limit
18 the Probation Office. In other words, the Probation Office,
19 when it prepares the pre-sentence report, may find different
20 guideline numbers.

21 Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: All right. Moreover, the Court's not
24 required to accept these numbers. I could find your offense
25 level is higher or lower, for example, than what's in the plea

1 agreement. There may be other enhancements, a vulnerable
2 victim, I don't know, abuse of a position of trust. Those are
3 types of things that can increase an offense level, and
4 although you-all aren't going to be able to argue about those,
5 the Probation Office may recommend to the Court that we use
6 them, and I may choose to use them, and that doesn't violate
7 your plea agreement.

8 Do you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: But at the end of the analysis, the Court
11 will make the decision as to what is your criminal history and
12 what is the offense level. Those two numbers are then put on a
13 one-page chart, and that establishes what is called the
14 advisory guideline range.

15 Now, the Court must look at that range and consider
16 it in determining the appropriate sentence, but the Court is
17 not required to sentence within it, and if the Court has good
18 reasons, it can sentence above the range or below the range.

19 Do you understand that?

20 THE DEFENDANT: Yes, I do.

21 THE COURT: In addition to the guidelines, the Court
22 also will look at the 3553(a) factors. So, for example, we're
23 going to look at your entire background, your entire employment
24 background, your financial background, your medical situation,
25 your family background, your role in this overall conspiracy,

1 because Keisha Williams is involved apparently with quite a few
2 other people in criminal activity, and this all appears to be
3 interrelated.

4 We're certainly going to look at whether you brought
5 anybody into this overall scheme. We have to consider
6 deterrence, that is, making sure that you don't engage in this
7 conduct again, as well as sending out a general message of
8 deterrence to others. So there's a lot of factors that go into
9 the sentencing decision.

10 Do you understand that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Now, I'm going to assume that you've
13 spent a lot of time, because most defendants do this, in
14 talking with your attorneys about the possible sentence you
15 might get in this case.

16 Have you done that?

17 THE DEFENDANT: Yes.

18 THE COURT: And your attorneys may have given you
19 some estimates or, for that matter, the prosecutors may have
20 given you some estimates as to what kind of a punishment or
21 sentence they think you're looking at in this case. Has that
22 happened?

23 THE DEFENDANT: Yes.

24 THE COURT: I want to make sure you understand that
25 no matter what your lawyers or the prosecutors or the case

1 agents or anyone else may have told you they think your
2 sentence may be, none of those discussions are binding on the
3 Court, and so if at your sentencing hearing you receive a
4 sentence that is different from what you might be expecting or
5 hoping for, that is not a violation of your plea agreement, and
6 it will not give you a basis to withdraw your guilty plea.

7 Do you understand that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: Defendants normally have the right to
10 appeal both their conviction and their sentence, but if you
11 look at paragraph 5 of your plea agreement, this is on the page
12 numbered 4, and it's the second sentence, beginning with the
13 word "Nonetheless," as a condition of this plea agreement, you
14 are knowingly waiving -- that same word, which again means
15 giving up -- your right to appeal both your conviction for this
16 wire fraud charge and any sentence as long as the sentence is
17 not greater than the statutory maximum.

18 That means as long as the Court does not sentence you
19 to more than twenty years in prison followed by three years of
20 supervised release and the fine does not exceed the statutory
21 limits and the special assessment is not more than \$100, you
22 cannot appeal that sentence for any reason. If you were to
23 file an appeal, it will be summarily dismissed because you've
24 given up your right to appeal.

25 Do you understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: Now, in exchange for your guilty plea,
3 the government has agreed in paragraph 9 not to further
4 prosecute you in this district for any of the activities
5 described either in the criminal information or the statement
6 of facts. Now, do you understand that paragraph 9 is not going
7 to protect you from being prosecuted in any other jurisdiction?

8 So technically, California probably could prosecute
9 you for some of your activities connected with this case,
10 possibly, or if you're involved in some other criminal activity
11 in the Eastern District of Virginia, you're also not protected
12 from that. Do you understand?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Now, in paragraph 10, you've agreed to
15 cooperate with the United States, and that cooperation is
16 described in subparagraphs (a) through (g) but includes among
17 other things your testifying truthfully and completely at any
18 trials, grand juries, or other proceedings; being reasonably
19 available for pretrial debriefings; and providing the
20 government access to any evidence it might need for a criminal
21 case.

22 Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: In paragraph 11, the government has
25 agreed it will not use against you either to increase your

1 sentence or to bring a new prosecution any completely truthful
2 information you provide under paragraph 10. Do you understand
3 that?

4 THE DEFENDANT: Yes, I do.

5 THE COURT: Now, defendants who cooperate with the
6 government normally do so with the hope that that will help
7 them with their sentence, and that issue is addressed in
8 paragraph 14 of your plea agreement.

9 There are two types of motions that can be filed only
10 by the prosecutors; defense counsel can't file them; and these
11 are based upon a person's cooperation. The first would be a
12 motion under 5K1.1 of the sentencing guidelines, which gets
13 filed either before or at the sentencing hearing, and that kind
14 of a motion asks the Court to sentence below the guideline
15 range because of a defendant's cooperation and substantial
16 assistance.

17 The other type of motion is a Rule 35(b) motion,
18 which gets filed after the person has actually been sentenced
19 and is actually usually in prison doing time.

20 And what you need to understand is the government has
21 not promised or guaranteed you that they're going to file one
22 of these motions, so even if you've sat down and talked with
23 the agents, even if you've testified in the grand jury, if the
24 government is not satisfied that you've told them absolutely
25 everything that you know or they feel that you haven't been of

1 any help to them and they choose not to file one of those
2 motions, that is not a violation of the plea agreement.

3 Do you understand that?

4 THE DEFENDANT: I'm sorry to do this, but can you
5 repeat that?

6 THE COURT: Sure.

7 THE DEFENDANT: Because that was a lot.

8 THE COURT: The government has not promised or
9 guaranteed you that they're going to file one of those motions.
10 Do you understand that?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: So even if you've talked with the agents,
13 even if you testify at trial, if they don't think you told them
14 everything that you know or if they don't think it helped them
15 in any respect and they choose not to file one of these
16 motions, that is not a violation of the plea agreement because
17 they haven't promised you they're going to file the motion.

18 Do you understand that?

19 THE DEFENDANT: I do.

20 THE COURT: And you would -- it would not give you a
21 basis to withdraw your guilty plea because there's been no
22 violation of the plea agreement. Do you understand that?

23 THE DEFENDANT: I do.

24 THE COURT: Moreover, the Court's not required to
25 grant those motions. Even if it were filed, let's say a 5K1

1 motion, the Court might find no -- there's no basis to depart
2 from the guidelines. If that were the Court's decision, it
3 would not violate your plea agreement.

4 Do you understand that?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: All right. Now, have you had -- and I
7 take it there's no forfeiture in this case. There's just
8 restitution; is that correct?

9 MR. HANLY: That's correct, Your Honor.

10 THE COURT: All right. Have you had enough time to
11 tell your lawyers everything you know about this case?

12 THE DEFENDANT: Yes, I did.

13 THE COURT: Have they discussed with you the nature
14 of this mail fraud charge and any ways you could possibly
15 defend yourself against the charge if you pled not guilty and
16 you went to trial?

17 THE DEFENDANT: I'm sorry, you said this mail, mail
18 fraud?

19 THE COURT: I'm sorry, wire fraud.

20 THE DEFENDANT: Wire fraud, yes, yes.

21 THE COURT: Okay. And, counsel, did you get
22 discovery in this case?

23 MR. FINCI: No, Your Honor. We didn't get discovery
24 in this case, no, but we had a reverse proffer and other
25 opportunities to review the government's case, but not

1 discovery.

2 THE COURT: You didn't get any discovery at all? The
3 government didn't at least make you a proffer as to the
4 evidence that they had?

5 MR. FINCI: Oh, yes, yes. They made a proffer and
6 showed us some material.

7 THE COURT: Well, the material --

8 MR. FINCI: I apologize, Your Honor. We received FBI
9 302s of our client's statement and some statements of witnesses
10 that were relevant to the decision-making process. We had a
11 reverse proffer with the government, went over their entire
12 case against our client, and we had sessions with the
13 government.

14 THE COURT: Well, that's discovery.

15 MR. FINCI: Right. But in the nature of a huge
16 number of documents, we didn't get, but yes, you're correct,
17 Your Honor. That's more, that's more of the nature of what we
18 had in this case.

19 THE COURT: Well, I mean, are you as an attorney
20 satisfied that you saw enough of the government's evidence that
21 you could fully advise your client as to the strengths and
22 weaknesses of the government's case?

23 MR. FINCI: Oh, yes.

24 THE COURT: All right. And, Ms. McPhun, are you
25 satisfied that your lawyers had enough information to be able

1 to adequately advise you about what to do?

2 THE DEFENDANT: Yes.

3 THE COURT: Were you satisfied with how your counsel
4 negotiated on your behalf?

5 THE DEFENDANT: Yes.

6 THE COURT: And, counsel, just for the record, was
7 this the only plea you could get, or did you try to get
8 something else? I mean, this is a wire fraud count that you
9 got here.

10 MR. FINCI: As far as getting something else, no,
11 Your Honor. There were negotiations to reduce -- this is not
12 the first offer that has been accepted, if that's what you're
13 asking. The count didn't change.

14 THE COURT: Did you try to get a 371 conspiracy, for
15 example?

16 MR. FINCI: We did not try to get a 371 conspiracy,
17 Your Honor.

18 THE COURT: All right. But, I mean, did you keep
19 Ms. McPhun completely advised as to your negotiating efforts?

20 MR. FINCI: Yes, Your Honor.

21 THE COURT: And, Ms. McPhun, did you feel that your
22 lawyers kept you fully advised as to what they were doing with
23 the government?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. Are you fully satisfied with

1 the way your lawyers have worked for you in this case?

2 THE DEFENDANT: Yes.

3 THE COURT: And do you understand you still at this
4 moment have a right to change your mind and plead not guilty?
5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: If you did, then the case would get set
8 for trial, and at trial, the burden would be on the government
9 to prove your guilt, and that's a proof beyond a reasonable
10 doubt is the standard they must meet in order for you to be
11 found guilty at trial.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: Now, if you did go to trial, there are
15 certain rights and protections that you would have at trial
16 that you essentially give up by pleading guilty. At trial, you
17 could see all the government's witnesses and evidence and test
18 all of that information through the questions of your lawyers.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: You could ask the Court for help in
22 getting witnesses and/or physical evidence brought to the
23 courthouse by having the Court issue subpoenas. Do you
24 understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: You could testify at trial as a witness.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: You could also choose not to testify
5 because you have that right under the Fifth Amendment to the
6 Constitution, and if you remained silent at trial, no inference
7 of guilt could be drawn from your silence. Do you understand
8 that?

9 THE DEFENDANT: Yes.

10 THE COURT: You would, of course, have the right to
11 be represented by an attorney throughout your trial. If you
12 could not afford to pay for trial counsel, we would make sure
13 you had counsel appointed for you at taxpayers' expense.

14 Do you understand that?

15 THE DEFENDANT: Yes.

16 THE COURT: Now, there are two ways in which a case
17 can be tried. The first is to a judge alone, which we call a
18 bench trial. The second type of trial is a jury trial, in
19 which case 12 ordinary citizens are brought together to hear
20 the case, but in either type of trial, the burden is the same
21 on the government, and that is, a person cannot be found guilty
22 unless the government proves guilt beyond a reasonable doubt.

23 Do you understand that?

24 THE DEFENDANT: Yes.

25 THE COURT: And in order for them to do that, they'd

1 have to again prove each and every element of the offense
2 beyond a reasonable doubt. So they would have to be able to
3 prove, for example, that on or about the date they've alleged,
4 which is March 10, 2017, in this district, that you devised a
5 scheme and artifice to defraud or to obtain money by means of
6 making a false or fraudulent pretense to a victim, in this case
7 M.W.; and they would have to prove beyond a reasonable doubt
8 that in furtherance of this scheme, at some point, you caused
9 wire communications to cross state or interstate lines.

10 And that's the essence of this case. Do you
11 understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: All right. Now, in addition to the
14 rights I've just explained to you, if you had a jury trial, a
15 jury would have to be unanimous in order to reach a decision,
16 and that means if just one juror had a reasonable doubt about
17 your guilt, that jury could not convict you. It would be what
18 we call a hung jury. We'd have to declare a mistrial, and
19 you'd have a right to a new trial with a new jury.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: If you continued with a not guilty plea,
23 your lawyers could try to attack the prosecution's case, and I
24 don't know if there are any bases that might be successful,
25 but, for example, I understand you may have made some

1 statements to law enforcement. If there were legal defects in
2 how those statements were obtained, for example, you didn't get
3 *Miranda* warnings when you should have or if you were under
4 duress, it might be that that evidence could be kept out of the
5 case.

6 There may or may not be an adequate basis to show
7 that the wires were used. I don't know what, if any, defenses
8 you might have, but what you need to understand is that when a
9 person pleads guilty, she gives up any and all attacks on the
10 prosecution's case except for an attack on the jurisdiction of
11 the Court.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: And lastly, if you pled not guilty and
15 you went to trial and you were found guilty at trial, you could
16 appeal that finding of guilt to a higher-level court. Do you
17 understand that under the terms of your plea agreement as well
18 as the way the law is structured, by being found guilty based
19 upon your guilty plea, you give up your right to appeal your
20 conviction?

21 Do you understand that?

22 THE DEFENDANT: Yes.

23 THE COURT: Other than the written plea agreement
24 which is in court this afternoon, do you believe that anybody
25 has promised or suggested to you that by pleading guilty rather

1 than going to trial, you would get a lighter sentence or more
2 favorable treatment by the Court?

3 THE DEFENDANT: No.

4 THE COURT: Has anyone put any force or pressure on
5 you to plead guilty today?

6 THE DEFENDANT: No.

7 THE COURT: And again, is there anything about your
8 medical condition, your tendency to have panic attacks, or any
9 of that sort of thing that you feel has put pressure on you to
10 plead guilty today?

11 THE DEFENDANT: No.

12 THE COURT: All right. The last document that we
13 need to go over, and this document is incorporated in your plea
14 agreement, is a written statement of facts. The statement of
15 facts is four pages long, and I see what appears to be your
16 signature and the date of August 20 on the last page.

17 Did you, in fact, sign the statement of facts?

18 THE DEFENDANT: Yes.

19 THE COURT: And before signing it, did you carefully
20 read over the eight numbered paragraphs that precede your
21 signature?

22 THE DEFENDANT: Yes.

23 THE COURT: And do you understand that by signing the
24 statement, you did two things: You admitted the truth of
25 everything in those eight numbered paragraphs, and you admitted

1 that if the case had gone to trial, the government could have
2 proven all those facts beyond a reasonable doubt.

3 Do you understand that?

4 THE DEFENDANT: I understand that.

5 THE COURT: All right. Then as I understand it, you
6 live in Maryland; is that correct?

7 THE DEFENDANT: Yes, I do.

8 THE COURT: And you met Christian -- how does he
9 pronounce his name, "D'Andrade"?

10 THE DEFENDANT: "D'Andrade."

11 THE COURT: "D'Andrade"? And you met him in 2014?

12 THE DEFENDANT: Yes.

13 THE COURT: What was the social function?

14 THE DEFENDANT: My fiance's sister had a cookout, a
15 barbecue.

16 THE COURT: And so she knew him?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. And then there's a gap of
19 three years. Did you have any contact with him during those
20 three years between 2014 and 2017?

21 THE DEFENDANT: Just maybe another function or two
22 but we didn't speak.

23 THE COURT: All right. Then it says in paragraph 2
24 that in January of 2017, you learned about a health care
25 software that he was involved in purchasing. How did you learn

1 about that?

2 THE DEFENDANT: My fiance's sister told me about it.

3 THE COURT: All right. As a result, then you spoke
4 to him; is that correct?

5 THE DEFENDANT: Yes.

6 THE COURT: And how did you do that? By phone?
7 e-mail? How did you do it?

8 THE DEFENDANT: By phone.

9 THE COURT: All right. And he told you at that point
10 that he needed money to pay interest and fees so that he and
11 his partner, Keisha Williams, could complete the purchase; is
12 that correct?

13 THE DEFENDANT: That's correct.

14 THE COURT: How much money did he need?

15 THE DEFENDANT: At the time, I believe it was 210.

16 THE COURT: 210,000 or --

17 THE DEFENDANT: Yes.

18 THE COURT: 210,000?

19 THE DEFENDANT: 210,000.

20 THE COURT: All right. And then he indicated that
21 the money would be repaid in less than 30 days; is that
22 correct?

23 THE DEFENDANT: That is correct.

24 THE COURT: So as a result of that, you agreed to
25 loan him money?

1 THE DEFENDANT: Yes.

2 THE COURT: Did you have that much money yourself?

3 THE DEFENDANT: No, I did not.

4 THE COURT: So how were you planning to get the
5 money?

6 THE DEFENDANT: I had a young lady that I worked
7 with, she's a business associate that I worked with in real
8 estate, and I asked her to put in the money.

9 THE COURT: So she had access to \$230,000?

10 THE DEFENDANT: Yes, um-hum.

11 THE COURT: And did she do that?

12 THE DEFENDANT: Yes, she did.

13 THE COURT: All right. And it says then in paragraph
14 3 that he did not repay you. Is that correct?

15 THE DEFENDANT: That is correct.

16 THE COURT: So how did you handle that with your,
17 with your business colleague?

18 THE DEFENDANT: Well, we were promised that -- by
19 D'Andrade that the delays would give us extra interest, so I, I
20 just let the client know that, and she said that was fine.

21 THE COURT: Now, did there come a time when you wound
22 up speaking directly with Williams rather than D'Andrade?

23 THE DEFENDANT: That was only three weeks before her
24 arrest.

25 THE COURT: All right. But did she make statements

1 to you similar to the ones he had been making about their
2 repaying you?

3 THE DEFENDANT: On three-way conversations at times.

4 THE COURT: Now, it indicates that you invested
5 approximately \$300,000 of your own money and you obtained
6 approximately \$1 million for D'Andrade and Williams from
7 others. Is that correct?

8 THE DEFENDANT: That is correct.

9 THE COURT: And is it you yourself who got the
10 million dollars, or was it your partner who was getting the
11 money?

12 THE DEFENDANT: No, it was me from the clients that I
13 worked with in the past.

14 THE COURT: All right. And it indicates then in
15 paragraph 5 that in March of 2017, D'Andrade told you that he
16 and Williams needed additional money. Is that correct?

17 THE DEFENDANT: Yes, that is correct.

18 THE COURT: All right. And he said that the money
19 was needed to pay fees to the bank that would be receiving
20 millions in loan proceeds into Williams' account; is that
21 correct?

22 THE DEFENDANT: That is correct.

23 THE COURT: And that you in order to raise that money
24 convinced M.W. to provide \$100,000, and that you told M.W. that
25 the money was to be used to help pay -- I'm sorry, that instead

1 of telling M.W. that the money was to be used to pay bank fees,
2 you told M.W. the money would be used on two real estate
3 projects in Maryland.

4 Is that correct?

5 THE DEFENDANT: That is correct.

6 THE COURT: And that's a false statement. Do you
7 agree with that?

8 THE DEFENDANT: Yes, I do.

9 THE COURT: It looks like you want to add something.

10 THE DEFENDANT: Yes. We --

11 MR. FINCI: Can I talk to you?

12 Can I beg your indulgence, Your Honor?

13 THE COURT: Yes, go ahead.

14 MR. FINCI: Thank you.

15 (Discussion between Mr. Finci and the defendant off
16 the record.)

17 THE DEFENDANT: Okay. I'm good.

18 THE COURT: Did you want to add anything or not?

19 THE DEFENDANT: No, I'm good. Thank you.

20 THE COURT: All right. And is it correct that at the
21 end of the day, that Williams instructed you to get M.W. to
22 wire the money that M.W. was supposedly investing in this real
23 estate directly to Williams' account?

24 THE DEFENDANT: Yes, but it was told through
25 D'Andrade because I dealt with D'Andrade.

1 THE COURT: All right. But you still ultimately, you
2 were the one who ultimately told M.W. to wire the money to
3 Williams' account?

4 THE DEFENDANT: Yes.

5 THE COURT: All right. And you understand that that
6 would constitute the act of using the wires to further the
7 fraud?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you understand if the Court accepts
10 your guilty plea today, there'll be no further trial of the
11 issue, and you will be found guilty?

12 THE DEFENDANT: Yes.

13 THE COURT: Do you claim in any respect that you're
14 innocent of the charge of wire fraud?

15 THE DEFENDANT: Not based on the guidelines.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: No.

18 THE COURT: You understand this is your day in court,
19 so if you're ambivalent about this, you're going to have to
20 live with the decision you make today. Do you feel in any
21 respect you're innocent of the crime of wire fraud?

22 THE DEFENDANT: No.

23 THE COURT: How then do you plead to the charge?

24 THE DEFENDANT: Guilty.

25 THE COURT: Counsel, have you had enough time to go

1 over this plea with your client?

2 MR. FINCI: I have, Your Honor.

3 THE COURT: Are you satisfied that the defendant has
4 entered her plea in a knowing and voluntary capacity?

5 MR. FINCI: Yes, Your Honor.

6 THE COURT: And that her guilty plea accords with
7 your understanding of the facts and circumstances?

8 MR. FINCI: Yes, it does, Your Honor.

9 THE COURT: All right. Then the Court is satisfied
10 based on all these answers to our questions that the plea has
11 been entered in a knowing and voluntary fashion, with the full
12 advice of competent counsel, and that the written statement of
13 facts is -- plus the oral admissions is more than enough
14 evidence upon which to find the defendant guilty beyond a
15 reasonable doubt.

16 I need to tell the government that when I set the two
17 sentencing this morning, I had forgotten that I'm going to be
18 out of the country that Friday. Is it possible for you to be
19 available Monday afternoon, December 10, for the sentencing?

20 MS. HILL: Yes, Your Honor. That's fine.

21 THE COURT: All right. We'll contact defense
22 counsel, and if they're available, the two pleas we took this
23 morning, we'll shift them to 2:00 on Monday, December 10.

24 We need to set bond in this case, I believe, right?
25 The defendant has not previously been on bond?

1 MR. HANLY: That's correct, Your Honor.

2 THE COURT: All right. Counsel, are you available on
3 Monday, December 10?

4 MR. FINCI: I am, Your Honor.

5 THE COURT: All right. That will be at 2:00.

6 MR. FINCI: Very well.

7 THE COURT: All right. Ms. McPhun, come back up to
8 the lectern. I'm going to release you on a personal
9 recognizance bond with the following terms and conditions:
10 First of all, you must be of uniform good behavior. That means
11 you cannot violate any federal, state, or local laws, which
12 includes traffic laws, while you're on bond.

13 Do you understand that?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Secondly, you must comply with all of the
16 conditions. They'll be explained to you by the Pretrial
17 Office. Do you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: Now, specific conditions are that you
20 must reappear in this court on Monday, December 10, at 2 p.m.
21 for sentencing. Do you understand that?

22 THE DEFENDANT: Yes, I do.

23 THE COURT: You must report as they direct on a
24 regular basis to both the Pretrial and Probation Offices. Do
25 you understand that?

1 THE DEFENDANT: Yes, I do.

2 THE COURT: All right. Are you currently employed?

3 THE DEFENDANT: No, I am not.

4 THE COURT: Are you seeking employment?

5 THE DEFENDANT: Well, I'm self-employed, but I have
6 not -- I haven't done any business.

7 THE COURT: Because of the large amount of
8 restitution, I am going to indicate that you should actively
9 seek employment. Do you understand that?

10 THE DEFENDANT: Yes, I do.

11 THE COURT: All right. You must surrender any
12 passport to the Pretrial Office. Do you have your passport
13 with you today?

14 THE DEFENDANT: Yes, I do.

15 THE COURT: All right. Give it to Pretrial.

16 And you are not permitted to obtain a passport or
17 other international travel document. Do you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: You must continue to reside at your
20 current address, and you may not leave the Washington, D.C.
21 Metropolitan area without prior approval of Pretrial Services
22 or the Court. Do you understand that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: You cannot have any contact with any
25 codefendants unless in the presence of counsel. Do you

1 understand that?

2 THE DEFENDANT: Yes, I do.

3 THE COURT: You may not possess any firearms,
4 destructive devices, or other dangerous weapons. Do you
5 understand that?

6 THE DEFENDANT: Yes, I do.

7 THE COURT: You may not use alcohol to excess nor may
8 you use or possess any illegal drugs. Do you understand that?

9 THE DEFENDANT: Yes, I do.

10 THE COURT: And lastly, you must notify any employer,
11 customer, or business associate of this conviction. Do you
12 understand that?

13 THE DEFENDANT: Yes, I do.

14 THE COURT: Are there any other conditions of release
15 that the government would be seeking?

16 MR. HANLY: No, Your Honor.

17 THE COURT: No? All right.

18 When you leave court today, you need to first of all
19 sign the bond papers, and then you need to go down to the
20 Marshals Office for fingerprinting and photograph -- being
21 photographed. That's called processing.

22 Then you need to check in with Pretrial Services so
23 you can hand in your passport, and they will explain to you
24 your obligations under bond, and then you need to go to the
25 Probation Office to sign up for the pre-sentence investigation.

1 All right?

2 THE DEFENDANT: Okay.

3 THE COURT: All right. Anything further on this
4 case?

5 MR. HANLY: No, Your Honor.

6 THE COURT: No? All right. Then we'll recess court
7 for the day.

8 MR. FINCI: Thank you, Your Honor. Have a pleasant
9 day.

10 (Which were all the proceedings
11 had at this time.)

12

13 CERTIFICATE OF THE REPORTER

14 I certify that the foregoing is a correct transcript of
15 the record of proceedings in the above-entitled matter.

16

17

18

/s/
Anneliese J. Thomson

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